HYDER & ASSOCIATES
MANAGEMENT REPORT

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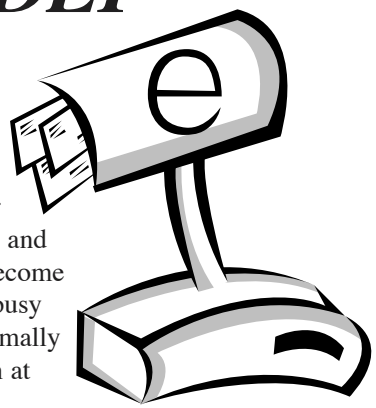
STOPPING THE SEVEN DEADLY SINS OF BUSINESS E-MAIL

One of greatest engines of business efficiency, electronic communications, has also become the most fertile source of litigation expense and difficulty. While some frustrated business leaders eschew e-mail in their own dealings and may wish to disconnect the company system, that is not a realistic response to the e-mail dilemma. Most likely, employers are beginning to address this pressing issue with the establishment and enforcement of enterprise electronic communications policies. Whether your firm has taken this step or not, your company can reduce litigation exposure by reviewing its electronic communications policies and practices. Many considerations go into the creation of an effective policy.

To start with a few basic ground rules, consider the following seven deadly sins of business e-mails.

ASSUMING "DELETE" EFFECTIVELY ERASES THE E-MAIL TRAIL. Despite the lessons of case after case, too many business people still believe that e-mail communications are untouchable because they're not permanent. In fact, through technical means supposedly deleted e-mails often can be recovered. The act of erasing an e-mail is not analogous to recording over an audio or video tape, and depending upon the nature of the hardware software and skill of the forensic examiner, restoration is relatively easy. The typical sender of e-mail would be surprised at how many copies are replicated at various steps in its transmission, and we all know that we have no control over the dissemination and replication of our writing once it is on its way to a recipient.

As a matter of disaster planning and business continuity, most businesses make back-up copies of the contents of their computer systems, including electronic communications, which may be saved for months or even years. For certain businesses, such as broker-dealers and investment advisors, retention of archived electronic communications for periods of up to five years is required as matter of law. Moreover, once an investigation or litigation is reasonably anticipated, deletion of relevant electronic communications is forbidden. For all these reasons, it's critical that business people understand that for all practical purposes their writings are permanent.



USING COMPANY E-MAIL FOR PERSONAL USE. With our predilection for time-shifting and multitasking, e-mails have become the most popular means for busy people to communicate informally with friends and family, even at work. Indeed, unlike personal phone calls, e-mail cannot be overheard by colleagues, and personal e-mail is distinctly different from a responsible business communication. Most e-mail policies make clear to employees that even their personal e-mails when written on a company system are the property of the company and are subject to company review and surveillance. In certain state and international jurisdictions, it is important to publish this reminder and to have its receipt acknowledged by the employee.

NOT CONSIDERING HOW IT WOULD LOOK IN THE PUBLIC MEDIA. Even when written for legitimate business purposes, many e-mails are riddled with content never intended for newspapers or television. But that is exactly where business e-mails sometimes end up published. There is an endless supply of mechanisms that include document discovery in litigation, freedom of information act requests in government, mis-addressing, mis-delivery and unexpected forwarding, and hack-

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COMPLIANCE CORNER

UNDERSTANDING THE FAMILY MEDICAL LEAVE ACT

Who qualifies, when do they qualify and what does it mean to "qualify" are questions that many employers wish could be left unanswered. What you don't' know, can hurt you. The general principle is as follows.

The FMLA entitles "eligible employees" of covered employers to take up to 12 weeks of unpaid, job protected leave each "year" with continuation of group health insurance coverage under the same conditions as existed prior to leave and reinstatement to the same or equivalent position for qualifying family and medical reasons. The statute defines an "eligible employee" as one who has "been employed … for at least 12 months by the employer with respect to whom leave is requested and for at least 1,250 hours of service with such employer during the previous 12-month period." In turn, "any 12-month period" is defined in the statute and permits the employer to elect any one of the following measurements: (1) a calendar year, (2) a fixed 12-month "leave year" (i.e., the employer's fiscal year if different than the calendar year), (3) a 12-month period rolled forward from the date any employee's first FMLA leave begins, or (4) a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

How You Can ADD VALUE to YOUR JOB

Contribute to your organization's bottom line by asking yourself this question regularly: "If this were my money instead of the company's, would I spend it this way?" Apply it to everything from expense accounts to new office equipment.

OPTIMISM ISN'T ALWAYS THE KEY TO SUCCESS

Many management experts are now saying that pessimists make great managers. Why? Because they're always thinking of what could go wrong and are therefore coming up with solutions to problems – just in case the worse happens. So, if you're an optimist, force yourself to write down everything that could go wrong with new projects, ideas, employees, etc. Once you do this, you'll naturally be prepared with solutions if disaster strikes.

CELL PHONES DON'T BELONG AT MEETINGS

As instant messaging gains popularity among professionals as a vital communication tool, face-to-face conversation is taking a hit. This is especially true in meetings. Some attendees try to keep a low profile and only speak up to endorse whatever consensus the group reaches.

You may notice these individuals because they're constantly looking down at their cell phone. Why? They may be conducting IM chats with friends and largely tuning out what is said in the meeting. Demand everyone's attention and prohibit cell phones in meetings. Let participants know that if they need to use their phones for any reason, they must leave the room.

TRENDS

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Chapter 5: Encouraging Innovation. The chapter addresses ways for the U.S. to harness the benefits of innovation to address cyber security concerns, including work with the private sector to define performance and security objectives for future infrastructure, link research, infrastructure development, and expand coordination of government, industry, and academic research efforts. It also addresses supply chain security, national security, and emergency preparedness telecommunications efforts.

DEADLY E-MAIL

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ing. "About 92% of Enron's e-mail database was made public by the Federal Energy Regulatory Commission and it revealed some interesting – and frightening – information: According to Audotrieve, 8% of the e-mails contained personal information about individuals, such as medications that were used by Enron employees, while another 4% contained things like offensive racial comments and pornography." (Network World Fusion, "Lessons from Enron e-mail database", Dec. 2, 2004)

EXAGGERATING, JOKING, LOSING YOUR TEMPER, BOASTING, guaranteeing, leaking sensitive information, carrying on a debate or spreading rumors. Remember, not everyone's humor is the same. E-mail does not convey tone of voice, even when helped along by smiley faces and other illustrative tricks. Any content that is not a true fact can be presented as supposed fact in litigation, leaving the writer with the difficult task of explaining why the exaggeration, sarcasm, or boast was included only for attention-getting effect.

FAILING TO HEED COPYRIGHT LAWS. When a published item is saved electronically, such as in a PDF file, you might think it's truly yours; however, the mere act of forwarding it, even internally within a company, could be possible violation of copyright law.

FAILING TO DOUBLE-CHECK REPLY, To, CC, BCC, Lists. You would be surprised how many problems are created by employees who address an e-mail without examining the list of addresses. Doing so is quite a bit like driving a car while talking on the cell phone. You risk making mistakes without having any recollection of your actions. Be mindful of the "auto-fill" function on many e-mail systems.

IGNORING INCOMING E-MAIL THAT REQUIRES CORRECTIVE ACTION. With the increased emphasis in new laws such as Sarbanes-Oxley on accountability and problem elevation, doing nothing with respect to a problematic incoming e-mail is not a viable option. Moreover, it is usually inadvisable to solve this problem by forwarding the problematic e-mail to someone else within the company. It is a much better idea to talk to inside or outside legal counsel about appropriate handling of the problem. That step can also allow for the maximum possible preservation of corporate attorney-client and work product privileges relating to the consultation and later corrective action.

SOURCE: HR Fact Finder, June 2009

FAMOUS QUOTE

Try not to become a success,
but rather try to become a man of value.

— Albert Einstein

SHARON HYDER, CMC, CRM ANSWERS YOUR MANAGEMENT QUESTIONS

These economic times are causing more stress in the workplace. Do you have any tips on how to deal with these stresses?

Whether you are a business owner, manager, or part of the workforce team, stress in the workplace environment tends to be something that everyone has to deal with – especially in this economy. The more stress you have, the more susceptible you may be to developing poor health in general. Here are 5 tips you can use each day to keep that stress level down.

SLEEP. We all know that we need to get a good night's rest. But even though we know we should does not mean that everybody does. Your body needs time to recharge its batteries each and every day. A full night's sleep should always be a priority.

EATING RIGHT is always important. You need to have a well balanced diet to help keep your energy levels up. Taking a multi-vitamin can often help a person fight the affects of stress.

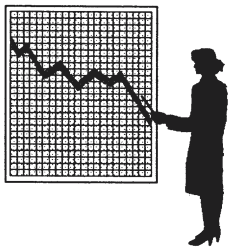
EXERCISE. Don't let your gym membership collect dust. Mentally you may hate to exercise, but your body would probably love a good workout.

DON'T PROCRASTINATE. Deal with tasks as soon as you can. Most people like to put off till tomorrow what could have been done today. Putting off a task that is difficult or unpleasant will only cause you a higher level of stress.

BE ORGANIZED. Staying organized is just one more way to stay relaxed which keeps your stress levels down.

Trends...

WHITE HOUSE RELEASES RESULTS OF CYBERSPACE POLICY REVIEW



In February 2009, President Obama directed the National Security Council (NSC) and Homeland Security Council to conduct a 60-day review of the plans, programs, and activities under way throughout government that addresses the U.S. communications and information infrastructure. The final review was released on May 29 in five main chapters and is outlined below.

CHAPTER 1: Leading from the Top. Makes the case for strengthening cyber security leadership for the United States through: (1) the establishment of a presidential cyber security policy official and supporting structures; (2) reviewing laws and policies; and (3) strengthening cyber security leadership and accountability at federal, state, local and tribal levels.

CHAPTER 2: Building Capacity for a Digital Nation. Advocates a national dialogue on cyber security to increase public awareness of the threats and risks and how to reduce them. Outlines the need for increased education efforts at all levels to ensure a technologically advanced workforce in cyber security and related areas similar to the United States' focus on mathematics and science education in the 1960s. Identifies the need to expand and improve the federal information technology workforce and for the federal government to facilitate programs and information sharing on cyber security threats.

CHAPTER 3: Sharing Responsibilities for Cyber Security. Discusses the need for improving and expanding partnerships between the federal government, private sector and key U.S. allies.

CHAPTER 4: Creating Effective Information Sharing and Incident Response. The U.S. needs a comprehensive framework to facilitate coordinated responses by government, the private sector, and allies to a significant cyber incident. This chapter explores elements of such a framework and suggests enhancements to information-sharing mechanisms to improve incident response capabilities.

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MANAGEMENT REPORT

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